

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YOVANNY DOMINGUEZ, *individually and* :
on behalf of all other persons similarly situated, :
Plaintiff, : 19-cv-10335 (LJL)
:-----
-v- : ORDER
THE CHEESECAKE FACTORY :
RESTAURANTS, INC., :
Defendant. :
-----X

LEWIS J. LIMAN, United States District Judge:

The Court stayed this case pending a decision by the Second Circuit on appeals before it concerning the same issues and arguments raised in this case. At the time, defendants had filed a motion to dismiss the complaint. Dkt. No. 24. No answer had been filed.

On June 2, 2022, the Second Circuit issued a decision in the consolidated appeal *Calcano v. Swarovski N. Am. Ltd.*, No. 20-1552, 2022 WL 1788305 (2d Cir. June 2, 2022). In *Calcano*, the Second Circuit held that plaintiffs' "conclusory claims" that they intended to return to Defendants' stores were not sufficient to allege standing. *Id.* at *6. The mandate has not issued.

It is hereby ORDERED that within 30 days of the issuance of the mandate in *Calcano*, Plaintiff shall submit a letter indicating whether he intends to amend his complaint in light of the Second Circuit's decision in *Calcano* or whether he will stand on his original complaint. If Plaintiff intends to amend his complaint, he shall have 45 days after the issuance of the mandate to do so. In the event that Plaintiff amends its complaint, Defendant may either move against the amended complaint or answer. In the event Plaintiff does not amend its complaint, the Court will proceed to consider the pending motion to dismiss.

SO ORDERED.

Dated: June 30, 2022
New York, New York


LEWIS J. LIMAN
United States District Judge